

**California Regional Water Quality Control Board
Santa Ana Region
Staff Report**

January 22, 2004

ITEM: 17

SUBJECT: Order No. R8-2004-0013 Affirming Mandatory Penalties Complaint No. R8-2003-0132, Androp Packaging, Inc., Ontario, San Bernardino County

BACKGROUND

On December 12, 2003, the Executive Officer issued Mandatory Penalties Complaint (MPC) No. R8-2003-0132 to Androp Packaging, Inc. (Androp Packaging) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the MPC (attached), the Executive Officer proposed an assessment of \$1,000 for the alleged violation.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2004-0013 affirming the proposed mandatory penalties complaint against Androp Packaging.

MPC No. R8-2003-0132 was issued by the Executive Officer to Androp Packaging for failing to submit an Annual Report as required by the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board. One of the requirements of the General Permit is that permittees submit, by July 1 of each year, an annual report that documents: storm water sampling and analysis results; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and, a certification as to the accuracy of the submitted information.

Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board was mailed to Androp Packaging indicating that a copy of the blank 2002-2003 Annual Report form could be accessed via the internet, and that a hard copy would only be mailed to Androp Packaging, if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Noncompliance (NNC) was issued to Androp Packaging, by certified mail, on August 1, 2003. The return receipt showed it was received on August 4, 2003. When Board staff received no response to the first NNC, a second NNC was issued on September 17, 2003, again by certified mail, and was received on September 19, 2003. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July

1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 18, 2003.

On October 20, 2003, Board staff left a telephone message with Mr. Laurier Gagnon, Androp Packaging's representative, regarding the facility's non-submittal of the annual report. Board staff reiterated the mandatory minimum penalty conditions. The annual report was received in this office on October 21, 2003.

Androp Packaging failed to submit the required Annual Report to the Regional Board office within 60 days from the date on which the original Notice of Noncompliance was sent. Under these circumstances, Section 13399.33(c) of the California Water Code requires that a mandatory penalty shall be administratively imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000).

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm, and consistent. The above-described mandatory penalties complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$1,000 specified in the Mandatory Penalties Complaint issued by the Executive Officer on December 12, 2003, by adopting Order No. R8-2004-0013.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:

**Androp Packaging, Inc.
4400 E. Francis Street
Ontario, CA 91761-2327**

Attention: Laurier Gagnon

**Order No. R8-2004-0013
for
Mandatory Penalties**

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on January 22, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0132, dated December 12, 2003, and on the recommendation for the imposition of a mandatory penalty pursuant to Water Code Section 13399.33(c) in the amount of \$1,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Androp Packaging, Inc. (Androp Packaging), is authorized to discharge storm water under the Permit, WDID 8 36I017211. The Permit requires Androp Packaging to submit an annual report by July 1 of each year. Prior to the July 1, 2003 deadline, the SWRCB mailed a notice to Androp Packaging indicating that the blank annual report form was available from the website and a hard copy would only be mailed if requested. Androp Packaging did not submit the annual report by July 1, 2003. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Androp Packaging, the first one on August 1, 2003 and the second one on September 17, 2003. These NNCs reminded Androp Packaging that the annual report had not been received and that there is a mandatory minimum penalty for non-submittal of the annual report. The second NNC required Androp Packaging to submit the annual report by October 18, 2003. Androp Packaging was also reminded by phone to submit the annual report. The annual report was submitted on October 21, 2003.
2. Androp Packaging failed to submit the annual report to the Regional Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) for non-submittal of an annual report under these circumstances.

4. On December 12, 2003, the Executive Officer issued Mandatory Penalties Complaint No. R8-2003-0132 to Androp Packaging proposing that the Board impose the mandatory minimum penalty of \$1,000 on Androp Packaging for the violations cited above.
5. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13399.33(c), a mandatory penalty shall be imposed on Androp Packaging, in the amount of \$1,000, as proposed in Complaint No. R8-2003-0132 for the violations cited, payable as set forth below.

1. Androp Packaging shall pay \$1,000 to the State Water Resources Control Board by February 23, 2004.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 22, 2004.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2003-0132
)	
Androp Packaging, Inc.)	for
4400 E. Francis Street)	Mandatory Penalties
Ontario, CA 91761-2327)	
)	
Attention: Laurier Gagnon)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on January 22, 2004, at the City Council Chambers of Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting and the staff report will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Penalties Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Androp Packaging, Inc. (hereinafter Androp Packaging), located at 4400 East Francis Street in Ontario, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 36I017211. The General Permit requires submittal of an annual report by July 1 of each year.
5. Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to Androp Packaging, indicating that a copy of the blank 2002-2003 Annual Report form could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Non-Compliance (NNC) was issued to Androp Packaging, by certified mail, on August 1, 2003. The return receipt showed it was received by facility personnel on August 4, 2003. When Board staff received no response to the first NNC, a second NNC was issued on September 17, 2003, again by certified mail, and was received by the facility on September 19, 2003. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 18, 2003.


6. On October 20, 2003, Board staff left a telephone message with Mr. Laurier Gagnon, Androp Packaging's representative, regarding the facility's non-submittal of the annual report. Board staff reiterated the mandatory minimum penalty conditions and advised him that no extension could be given. On October 21, 2003, Board staff spoke with Mr. Gagnon. Mr. Gagnon stated that the annual report would be hand delivered to the Regional Board on the same day. The annual report was received in this office on October 21, 2003. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2003.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2002-2003 Annual Report, the facility is alleged to have violated the General Permit for 111 days (from July 2, 2003 to October 21, 2003). The total maximum liability for this violation is \$1,110,000.
9. Section 13399.33(c) of the California Water Code requires that the Regional Board impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that the mandatory minimum penalty of \$1,000 be imposed on Androp Packaging for the violation cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board for \$1,000. The bottom portion of the invoice, the waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Mary Bartholomew at (909) 321-4586 or Milasol Gaslan at (909) 782-4419. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

12-12-03
Date



Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. R8-2003-0132
)	for
Androp Packaging, Inc.)	Mandatory Penalties
4400 E. Francis Street)	
Ontario, CA 91761-2327)	
)	
Attention: Laurier Gagnon)	

WAIVER OF HEARING

I agree to waive the right of Androp Packaging, Inc., to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0132.

I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$1,000. I understand that I am giving up the right of Androp Packaging, Inc., to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Androp Packaging, Inc.



California Regional Water Quality Control Board

Santa Ana Region



Terry Tamminen
Secretary for
Environmental
Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
(909) 782-4130 • Fax (909) 781-6288
<http://www.swrcb.ca.gov/rwqcb8>

Arnold Schwarzenegger
Governor

December 12, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Laurier Gagnon
Androp Packaging, Inc.
4400 E. Francis Street
Ontario, CA 91761-2327

MANDATORY PENALTY COMPLAINT NO. R8-2003-0132

Dear Mr. Gagnon:

We are enclosing a certified copy of Complaint No. R8-2003-0132, proposing a mandatory penalty of \$1,000 for violations of the California Water Code and the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001. An invoice for this amount is also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 22, 2004. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$1,000. The check or money order should be made payable to the State Water Resources Control Board. The waiver form, the bottom portion of the invoice and the check or money order should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to January 5, 2004. At that time, you may submit information that may not have been previously available to staff regarding this matter.

California Environmental Protection Agency

Androp Packaging, Inc.
Mr. Laurier Gagnon

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December 12, 2003

If you have any questions regarding this complaint, you may contact Mary Bartholomew at (909) 321-4586 or Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0132, Waiver Form, Invoice, and envelope

cc: State Water Resources Control Board, Division of Water Quality – Bruce
Fujimoto
State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Kathi Moore
San Bernardino County, Storm Water Program, NPDES Coordinator – Naresh
Varma
City of Ontario, NPDES Coordinator – Steve Wilson